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10/798,420	03/12/2004	Jeff Norman	190262/342957 (G000001483)	6542
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John R.S. Orange McCarthy Tetrault LLP 66 Wellington Street West, Suite 4700 P.O. Box 48 Toronto, ON M5K 1E6 CANADA		EXAMINER FIELDS, BENJAMIN S		
		ART UNIT PAPER NUMBER		
		3609		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/798,420

**Applicant(s)**

NORMAN ET AL.

**Examiner**

BENJAMIN S. FIELDS

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

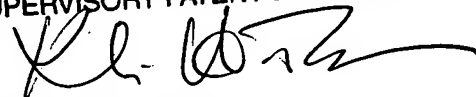
- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

KHOI H. TRAN  
SUPERVISORY PATENT EXAMINER



### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_:

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 16 is objected to because of the following informality:

It appears that the dependency to Claim 16 has been re-written to itself.

Therefore, Claim 16 has been withdrawn from consideration. Appropriate correction is required.

2. In regards to Claim 17: "said server broker" lacks proper antecedent basis.

Appropriate correction is required.

3. In regards to Claim 20: "said server broker" lacks proper antecedent basis.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-15, and 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fisher et. al (US Pat. No. 5,835,896), [hereinafter Fisher].

Referring to Claim 1: Fisher teaches an auction system for conducting an online auction of merchandise in a plurality of lots presented on a webpage between a bidder and a seller in a communication network (Fisher: Abstract; Column 7, Lines 8-41), said system having: a host computer associated with an auction host (Fisher: Figure 1,

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#250//Fisher displays a host server computer which is involved in an auction//); a bidder computer and a seller computer coupled to said host computer (Fisher: Figure 1, #210 & #275//Fisher displays both a bidder and seller computer which is coupled to one another via a network in an auction//); said computers having a computer usable medium having a plurality of program codes for executing instructions pertaining to said auction (Fisher: Column 7, Line 24); said plurality of program codes including: a first computer readable program code for administering and managing said auction by defining characteristics and parameters of said auction as dictated by said auction host (Fisher: Figure 1, #248; Figure 2; Column 7, Lines 23-28//Fisher displays a computer readable medium which contains program code that operates the auction – Fisher also displays the auction parameters in Figure 2//); a second computer readable program code for defining said webpage interface presented on said bidder computer and said seller computer (Fisher: Figure 1, #280; Column 7, Lines 23-28//Fisher shows the computer readable medium being able to allow an output display to both the bidder and seller screens [Figure 1, #210] which is part of the auction//); a third computer readable program code for defining real-time updating of dynamic elements within said webpage associated with a status of sale of said merchandise (Fisher: Figures 3 & 4; Column 7, Lines 23-28//Fisher shows an auction system that will constantly keep both the bidder and seller abreast of the status of the on-going trade, etc.//); a fourth computer readable program code for defining a method for recording actions of said bidder and said seller to the host computer in real-time and presenting said actions on said webpage in real-time (Fisher: Figures 3 & 4; Column 7, Lines 23-32//Fisher shows an auction system

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that will constantly keep both the bidder and seller abreast of the status of the on-going trade, etc.//); a fifth computer readable program code for enabling negotiation of a sale of said merchandise between said bidder and said seller after a predetermined time as specified is said parameters (Fisher: Figure 4; Column 7, Line 23; Column 7, Lines 65 - Column 8, Line 14//Fisher shows an auction system which allows the bidder and seller to negotiate; that will constantly keep both the bidder and seller abreast of the status of the on-going trade, etc.//); wherein said auction is conducted in real-time between said bidder and said seller within said network (Fisher: Figures 3 & 4; Column 7, Lines 23-28//Fisher shows an auction system that will constantly keep both the bidder and seller abreast of the status of the on-going trade, etc.//).

Referring to Claim 2: Fisher discloses a system wherein said bidder specifies bids for merchandise via a sequence of forms on said webpage to hand off bid information to an auction server (Fisher: Figure 4; Column 7, Line 50 – Column 8, Line 29//Fisher displays a webpage interface which allows bidder/seller input via a sequence of forms//), said auction server executing said auction programs to implement said auction in accordance with said parameters, and said bid information being stored in an auction database (Fisher: Figure 4).

Referring to Claim 3: Fisher shows a system wherein said auction database includes a daemon process for monitoring the auction database for events to process or bids to verify, each auction program can be implemented in multiple concurrent processes (Fisher: Column 7, Lines 18-25; Column 8, Lines 15-20//Fisher discloses a system which, at predetermined intervals, updates the processes that are taking place

within the auction network/system//), each one managing a different auction (Fisher: Figure 4//[A 'daemon' process is known as a process, which, while running on any/a computer operating system, operates in the background, and does so at either predetermined time intervals or in response to certain events which occur within the system; perhaps even a combination of both] - Fisher displays a system which is capable of such//).

Referring to Claim 4: Fisher discusses a system wherein said auction parameters may be changed when said auction is in progress (Fisher: Figure 7; Column 9, Lines 1-17//Fisher displays an auction system/network where a user can update/change auction information randomly//).

Referring to Claim 5: Fisher teaches a system wherein said webpage interface includes a section for said seller to monitor said seller's merchandise in said auction (Fisher: Figure 3//Fisher discloses a webpage interface which allows the seller to monitor existing transactions involved in the auction//), a section for said bidder to monitor to merchandise said bidder is bidding on, a section to monitor bids on said merchandise and a section to enter bids (Figure 3// Fisher discloses a webpage interface which allows the seller to monitor existing transactions involved in the auction//).

Referring to Claim 6: Fisher discloses a system wherein said webpage interface includes a section for negotiating said sale of merchandise between said bidder and said seller, and a section for making offers and counter-offers (Fisher: Figures 2-4).

Referring to Claim 7: Fisher shows a system wherein said fifth computer readable program code include an offer program code for processing offers and counter-offers during said negotiating (Fisher: Figure 4; Column 7, Line 23; Column 7, Lines 65 - Column 8, Line 14//Fisher shows an auction system [operated via machine readable code] which allows the bidder and seller to negotiate; that will constantly keep both the bidder and seller abreast of the status of the on-going trade, etc.//), and said offer program code allowing accepting and withdrawing of said offers and counter-offers (Fisher: Figures 4-7; Column 7, Line 50 – Column 9, Line 34//Fisher discusses a offer/counter-offer process that takes place within the auction system//).

Referring to Claim 8: Fisher discusses a system wherein said merchandise is presented on said webpage in a row by row format (Fisher: Figures 2 & 3//Fisher displays a webpage format which details the merchandise involved with the auction//), each row having a plurality of descriptor fields associated with each of said merchandise (Fisher: Figures 2 & 3//Fisher displays a webpage format which details the merchandise involved with the auction; each webpage with descriptor fields which detail each merchandise//).

Referring to Claim 9: Fisher teaches a system wherein said merchandise are vehicles, and said descriptor fields including a vehicle unique identifier, year of assembly, make, model, body colour, mileage, type, auction segment, status of sale, current bid, and bid type.

The Examiner notes that the specific group from which the merchandise is chosen as well as said descriptor fields listed in order to operate the online auction does

not functionally affect the generic method of operating such system. These parameters qualify as non-functional descriptive material and do not alter how the method operates. Therefore, this descriptive material is given minimal weight; see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Referring to Claim 10: Fisher discloses a system wherein said bid type includes a range bid, a firm bid or an offer, said range bid and said firm bid being incremented automatically by a predetermined amount as dictated by said bidder (Fisher: Figures 3 & 7; Column 9, Lines 1-34//Fisher shows an auction system which allows the bidder to alter the bidding information data//).

Referring to Claim 11: Claim 11 is rejected on the same basis, as is Claim 9 as mentioned supra.

Referring to Claim 12: Fisher discusses a system wherein said bid information is presented to said bidder and said seller in chronological order at the termination of said auction of said merchandise (Fisher: Figure 6; Column 8, Lines 42-67//Fisher specifies a time format field which allows the auction system to interact with the auction database in order to group bids together via time//).

Referring to Claim 13: Fisher teaches a system wherein said bidder and seller make a selection of said merchandise to sell, to buy or to monitor, said selection being associated with a unique indicia (Fisher: Figure 4; Column 8, Lines 15-29//Fisher



displays an auction system which allows a bidder and/or seller to select [buy/sell/monitor] merchandise via a catalog//).

Referring to Claim 14: Fisher discloses a system wherein parameters include a unique identifier for said auction, a schedule time for conducting said auction, said lots of merchandise, pricing, bidding rules, negotiation rules, auction duration time, bidding countdown period, and so forth (Fisher: Figures 2 & 4; Column 7, Line 32 - Column 8, Lines 15-29//Fisher displays an auction system which allows for auction identifiers such as time, merchandise lot, pricing, bidding/negotiation rules, etc.//).

Referring to Claim 15: Fisher shows a system wherein said real-time updating of dynamic elements within said webpage includes a live-update sub-system for managing and storing said components at said bidder computer and said seller computer, and requesting corresponding up-to-date components from said host computer in order to reflect said real-time actions of said bidder and said seller (Fisher: Column 7, Line 65 – Column 8, Line 41//Fisher discloses an auction system which continually updates itself and notifies user via electronic mail of such status updates//).

Referring to Claim 17: Fisher teaches a system wherein said instantiated classes perform the dynamic function of element retrieval and presentation of said elements on said webpage, said elements being requested and retrieved via said server broker using an XML/HTTP protocol (Fisher: Figure 7; Column 9, Lines 1-17//[A 'class' as referred to in any computer programmable environment are understood by the examiner to simply be data structures of varying sorts] Hence, the classes to which applicant is referring to are those parameters mentioned in Claim 4 supra [Additionally, any interaction in a

computer environment between a browser and server together requires the Hypertext Transfer Protocol (HTTP) to take effect[//]).

Referring to Claim 18: Fisher discloses a system wherein said status of sale includes indicia to prompt action by said bidder and said seller (Fisher: Figure 3//Fisher discusses an auction system which requires continuous user [seller/bidder] input, etc//).

Referring to Claim 19: Fisher shows a system wherein said parameters include an overtime extension parameter associated with said one of said plurality of lots (Fisher: Column 8, Lines 42-67//Fisher teaches the procedures of the auction manager, which include monitoring the auction where an over time parameter is specified//).

Referring to Claim 20: Fisher discusses a method of dynamically updating elements included in a document at a client computer in real time from a host computer (Fisher: Figure 1, #210, 250, 275//Fisher displays a host server computer, a bidder and seller computer – all of which are coupled to one another via a network interface//), said elements having class and data components and document associated with an online auction (Fisher: Figure 1, #210, 250, 275//Fisher displays a system – all of which are coupled together via a network interface involved in an online auction//), the method having the steps of: loading said document in said client computer (Fisher: Figure 1, #248//Fisher displays a computer readable medium which in effect is loaded into the network interface//); scanning said document to recognize said class components and said data components (Fisher: Figure 1, #248, 250, 275//Upon document verification, the system in Fisher recognizes all class/data components within the network//); collecting and storing said class components at said client computer (Fisher: Figure 4;

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Column 7, Lines 50-65//Fisher's system stores the information received at a client computer within the network//); said client computer requesting an update of said class components from said host computer (Fisher: Column 7, Line 65-Column 8, Line 4//The system as disclosed continually updates all components within the network//); determining whether said class components already exist at said client computer (Fisher: Column 8, Line2 5-41//Fisher details a system which verifies data elements within the network//); requesting said class components from said host computer if the class components do not exist at said client computer, otherwise instantiating said class components to yield class instances (Fisher: Column 8, Line2 5-41//Fisher details a system which verifies data elements - if the data elements do not exist, they are created within the network//); executing said class instances (Fisher: Figure 1, #248//Once loaded, elements are executed within the system//); said client broker requesting an update of said data components from said host computer via said server broker (Fisher: Column 7, Line 65-Column 8, Line 4//The system as disclosed continually updates all components within the network//); said server broker determining whether said request for update of said data components has already be made by referencing a data collector and store (Fisher: Column 7, Line 65-Column 8, Line 4//The system as disclosed continually updates all components within the network, hence, usage of a data collector is performed//); said server broker initiating a data request from said server if said data collector and store do not have said update of said data; else a determination is made whether existing data components in said data collector and store is current, said server broker initiating a data request from said host computer; and updating said data

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components and class components on said webpage (Fisher: Column 8, Line2 5-41//Fisher details a system which verifies data elements - if the data elements do not exist, they are created within the network//).

Referring to Claim 21: Fisher teaches a method of conducting an online auction between participants in a communication network, said method having the steps of: presenting a plurality of merchandise on a webpage (Fisher: Figures 2-4); associating said merchandise with a status of sale, said webpage having dynamic elements pertaining to said status of sale (Fisher: Figures 3 & 4); changing said status of sale dynamically and in real time in response to actions by said participants (Fisher: Figures 3-7//Fisher displays a system where participants [seller/bidder] can monitor and alter actions as they occur//).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Godin et al. (US Pat. No. 5,890,138) teach a computer auction system.

Ausubel (US Pat. No. 6,021,398) show computer implemented methods and apparatus for auctions.

Any inquiry concerning this communication should be directed to Benjamin S. Fields at telephone number 571.272.9734. The examiner can normally be reached

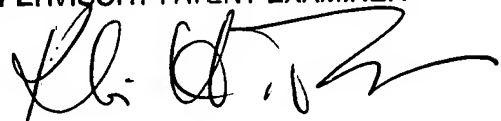
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Monday through Thursday, 9am to 7pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoi Tran can be reached at (571) 272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin S. Fields  
14 August 2007

KHOI H. TRAN  
SUPERVISORY PATENT EXAMINER

A handwritten signature in black ink, appearing to read 'Khoi H. Tran', is written over the printed name and title.